IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 8607 of 2007
Date of decision: July 26, 2007

Gurdev Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE S. N. AGGARWAL

Present: Ms. Deipa Asdhir Dubey, Advocate,
for the petitioners
Ms. Charu Tuli, Senior Deputy Advocate General,
Punjab.

K.S.GAREWAL, J.

Gurdev Singh Punia, Gurjit Singh Guri and Naresh Kumar Duggal, are Municipal Councillors, Municipal Corporation, Patiala from Wards 9, 6 and 50, respectively. They are elected Councillors whose tenure is due to end soon.

Elections to Municipal Corporations are notified under Section 7-A of the Punjab Municipal Corporation Act 1976, specifying the dates for the election. The State Election Commission starts taking necessary steps soon thereafter for holding the election.

The petitioners contend that the election should be conducted on the basis of proper delimitation of wards under the Delimitation of Wards Municipal Corporation Order 1995 (Annexure P/6), but in the delimitation that has been done there are many defects and irregularities. A

draft notification was issued on April 25, 2007 in respect of the delimitation (Annexure P/2) and objections were invited, which were filed by the petitioners on May 1, 2007 (Annexure P/3) but these were not considered. On May 11, 2007, notification (Annexure P/5) under Section 8 (2) of the Punjab Municipal Corporation Act, 1976 read with the Delimitation of Wards Municipal Corporation Order 1995 clause 8 (2) was issued by the Governor of Punjab notifying delimitation of the 50 wards of the Corporation. When the petitioners' objections were ignored, the petitioners filed CWP 7396 of 2007 which was disposed of by this Court on May 17, 2007 with a direction to the respondents to decide the legal notice dated May 9, 2007 (Annexure P/4) through which the earlier objections had been reiterated.

The petitioners allege that delimitation conducted by the respondents is illegal, unjust, arbitrary and violative of the provisions of the the Delimitation of Wards Municipal Corporation Order 1995. The ground for challenge are three-fold. Firstly, the wards which have been reserved for scheduled castes were not wards where the proportion of schedules caste population, in relation to the total population of the seat, was the largest; the principle of rotation of reservation for different wards has been violated. Secondly, reservation of seats for women were also required to be allocated by rotation to different wards and this has not been done. Thirdly, the Corporation was to be divided into wards in such a manner that the population of each ward was, as far as practicable, same throughout the Corporation, though there could be a variation upto 10% above or below the average population. The above objections were nothing but an application of the general principles of delimitation of the wards laid down in the

Delimitation of Wards Municipal Corporation Order 1995.

The learned counsel for the petitioners went on to elaborate her objections with specific instances through comparison between the delimitation done in 1998 and the present delimitation. Earlier, ward 1 had been reserved for a scheduled caste woman and it had again been reserved for a scheduled caste woman. Similarly, ward 2 had been reserved for a backward class person but the population of backward class in this ward was very meagre. Ward 28 had been kept intact, it had simply been re-numbered as Ward 25. Same was the case with Wards 4 and 7. It was further submitted that delimitation had to be been done clockwise but this was not done. Delimitation was not on the basis of population or boundaries. Wards which had only 10% to 15% scheduled caste population had been reserved for scheduled caste whereas wards in which the majority of population was of scheduled castes had been kept open for general candidates. The rotation principle had not been followed.

Notice was issued to the respondents. They replied pleading that delimitation had been carried out strictly in accordance with the provisions of law and the Constitution of India. Superintendence, direction and control of the preparation of the electoral rolls was to be under Articles 243-ZA. Delimitation of wards in Municipal Corporation, Patiala, was done on the basis of notification dated April 4, 1997 by a Board constituted under the provision of the Punjab Municipal Corporation Act, 1976 and the Delimitation of Wards Municipal Corporation Order 1995. The Board's first meeting was held on April 9, 2007 which formulated its scheme and the said scheme was sent to the government for consideration. It was published in the gazette on April 25, 2007 for inviting objections. 31 objections were

received within the stipulated time frame. 18 more /suggestions/objections also were received. These objections were sent to the Commissioner, Municipal Corporation, Patiala for comments. The comments received from Municipal Corporation were placed before the Principal Secretary, Local Government, Punjab and some changes were made in the delimitation wards, whereafter scheme was sent for publication.

After the petitioners' earlier petition had been disposed of with a direction to consider the legal notice, the matter was considered in detail, all objections were heard and decided through a speaking order passed on May 31, 2007 (Annexure P/1). It was finally stated that no opportunity of personal hearing was required to be given because there was no such provision. The principles of delimitation had been observed and complied with.

During the course of arguments, the petitioners' counsel highlighted a glaring discrepancy in the population of certain wards and the proposed voters in that ward. The statement of population based on notification of May 11, 2006 showed that the population of Ward 27 was 7268 while the total number of voters was 9546. On the face of it, these figures establish that voters were more than the population. Since the population figure includes non-voters as well, if voters are more than the population, there is an obvious verg basic defect in the delimitation process. At first flush, we were quite impressed by this line of argument. However, when we closely scrutinized the voter list for ward 27, we found that in the case of a larger number of voters, the number of voters identification card had not been mentioned. It is, therefore, obvious that whichever agency prepared the voters list had failed to record the number of identification card

either because no cards had been issued or because the person did not reside at the said location. This leads us to conclude that the number of voters in ward 27 was not 9546 but far less and certainly less than population figure of 7268. Therefore, the point that had compelled us to start thinking, did not mature into a strong enough factor to scuttle the delimitation altogether.

Delimitation of wards reserved for scheduled caste and women and rotation of wards and rotation of reservation are not easy tasks. Delimitation was accomplished on April 9, 2007. Report was sent to the State Government and the objections were notified on April 27, 2007. A week's time was given for filing objections. No personal hearing was required to be given as there was no such provision. According to the reply furnished by the respondents, 49 objections and suggestions were received and scrutinized. Commissioner, Municipal Corporation, Patiala, had gone into each and every objection and suggestion and prepared comments thereon. These comments were put up before the Principal Secretary, Department of Local Government for consideration and some changes were also made in the delimitation of wards. Thereafter, the scheme was sent for publication.

Since delimitation of wards is not an easy task, the rules required that delimitation shall be done as far as practicable, by making geographical compact area and in delimiting them, due regard shall be had to the physical features like facilities of communication and public convenience. In each of the clauses relating to reservation for scheduled castes and division of wards, it has been mentioned that it should be done as far as is practicable. In the draft scheme, regard was also to be given to the principle of contiguity. It is easy to see why the practicable aspect has been

highlighted while laying down the broad principles of delimitation. The practicable aspect of delimitation has always to be borne in mind and the best judge of this is the Delimitation Board which has the large canvass before it while undertaking its daunting task. If every objection is to be considered and satisfied the delimitation process would end in confusion and chaos. The Government considered 49 objections and tried to accommodate them. The petitioners' objections raised very fine points, but cannot be accommodated at all because the result would be chaotic and the process would be time consuming and impracticable.

The learned senior Deputy Advocate General also objected to the entertainment of the petition by referring to Articles 243 ZG (b) of the Constitution of India, which is re-produced hereunder:-

> "(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. "

This provisions is based on the statutory principle that once delimitation process has begun, only an election petition is the proper remedy. Defects in delimitation, an error here and there cannot stop the election process.

Notification under Section 7-A sub section (1) of the Punjab Municipal Corporation Act 1976 was issued on July 18, 2007 directing that general elections to Municipal Corporations be held by August 10, 2007. Thereafter notice under Section 35 of the Punjab State Election Commission Act, 1994 is to be issued on July 27, 2007. The election process quite clearly commenced on July 18, 2007 and delimitation of the wards cannot

now be interfered with or undone. Reference in this regard may be made to **Mohinder Singh Gill and another** v. **The Chief Election Commissioner, New Delhi and others** AIR 1978 Supreme Court 851 and **Anugrah Narain Singh and another** versus **State of U.P. and others** (1996) 6 Supreme Court Cases 303. The Hon'ble Supreme Court in Anugrah Narain Singh's case held as under:-

> "In terms of Article 243-ZG of the Constitution there is complete and absolute bar in considering any matter relating to municipal election on any ground whatsoever after the publication of the notification for holding municipal election. The bar imposed by Article 243-ZG is twofold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any court..."

We are of the considered opinion that the delimitation of the wards for the Municipal Corporation, Patiala has been done as effectively and accurately as was practicable and there is no ground to call for a fresh delimitation. Furthermore, the election process began on July 18, 2007 when the notification under Section 7-A of the Punjab Municipal Corporation Act, 1976 was issued, the stage for re-opening the delimitation has passed.

We find no merit in this petition. Dismissed.

(K.S. GAREWAL)
JUDGE

July 26 , 2007 **(S.N. AGGARWAL)**
prem **JUDGE**